IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 8590 OF 2005.
WITH
CRIMINAL APPLICATION NO.790 OF 2006

CRIMINAL APPLICATION NO.799 OF 2006.
WITH
CRIMINAL APPLICATION NO.800 OF 2006
WITH
CRIMINAL APPLICATION NO.801 OF 2006

State of Maharashtra ...Applicant.
V/s
Ashraf @ Tata Gulam Rasool Patel
And Others .. Respondents.

Mrs. M.M. Deshmukh for the applicant in all applications.

Mr. A.P. Mundargi, Senior Counsel i/b Mr. M.S. Mohite for the accused in Criminal Application No. 5890/2005

Ms. Prachi Tatke h/f Mr.V.V. Thorat for the respondent in Criminal application Nos. 790/2006 and 800/2006

Mr. P.R. Arjunwadkar for respondent in Criminal Application No. 799/2006

CORAM : S.C. DHARMADHIKARI, J.

DATE : 7TH SEPTEMBER, 2006.

P.C.

. This application is filed by the State invoking this Court’s power under Section 482 of Code of Criminal Procedure.

2. Although the application is styled as one for cancellation of bail invoking this Court's power under Section 439(2) of Cr.P.C., ultimately, under challenge is an order dated 13th October, 2005 passed by the learned Special Judge (MCOC Act), Thane in Criminal Misc. Application No. 147/2005 and connected matters.

3. Mrs. Deshmukh, learned A.P.P. appearing for the State invites my attention to the averments in this application and more particularly at page 5 and submits that the earlier application for being enlarged on bail in CR.No. I-104/2005 of Kashimira Police Station was for offence punishable under the provisions of Indian Penal Code and the respondents-accused were enlarged on bail by the Judicial Magistrate, F.C., Thane.

4. However, after the said order was passed in August, 2005, Approval was granted and it was decided to apply MCOC Act. In such circumstances, and once more stringent provisions of an Enactment like MOCOC Act are applied then that itself was a ground enough to cancel the bail granted by Judicial Magistrate, F.C., Thane. She submits that the application was placed before the learned Special Judge (MCOC Act), Thane and his

attention was invited to the fact that now a more stringent enactment is being applied and this development being subsequent, the bail granted by the Magistrate should be cancelled. That such application of stringent provisions is ground in itself to cancel the bail is an aspect which is considered by this Court and in this context Mrs. Deshmukh placed reliance on the Judgment of Mr. Justice Khanwilkar in the case of Sarang Arvind Goswamy V. State of Maharashtra, reported in **2005 (3) Mh. L.J.774**.

5. That apart, she submits that within the jurisdiction of the same Police Station, CR. No.215/2005 was registered against the respondent on 15th December,2005 under Sections 143, 323, 506 of Indian Penal Code r/w section 37(1) and 135 of Bombay Police Act. In these circumstances, the application for cancellation preferred by the State before the Special Judge ought to have been allowed. She therefore, submits that the order refusing to do so should be quashed and set aside by this Court under its inherent power.

6. Mr. Mundargi, Senior Counsel for the

respondents/accused, submits that the CR. was registered on 7th July, 2005, the bail was granted on 11 July, 2005. The approval was granted for applying MCOC Act on 29th August, 2005, the application for cancellation before the learned Special Judge was filed on 28th September, 2005 and it was decided by the impugned order on 13th October, 2005. Therefore, the registration of a subsequent CR. on 15th December, 2005 cannot be a ground for cancellation of bail in any event. The accussed-respondents had surrendered to custody in CR.No.215.2005 and were granted bail by the learned Magistrate. That apart, mere application of stringent provisions is not a ground for cancellation of bail straight way. He submits that the Judgment of the learned Single Judge of this Court is distinguishable on facts because the petitioner accused before this Court was released on bail but did not avail of the same. and was admittedly in custody. Once he was in custody more stringent provisions of MCOC Act being applied then the application for bail will have to be considered in the light of the provisions and restrictions therein and not under ordinary law. Once, the respondents-accused before me are already enlarged on bail then mere application of MCOC Act and approval granted in that

behalf cannot be a ground for cancellation of bail.

7. With the Assistance of the learned A.P.P. and Shri Mundargi, I have perused the application for cancellation of bail, the replies thereto and the order of the learned Designated Judge. I have also perused the judgment of Single Judge of this Court and the grounds in the application which is filed in this Court.

8. In my view, the present application is in fact an application to challenge the order of the learned Designated Judge, refusing to cancel the bail granted by the Magistrate. The applicants have moved the matter on the basis that as a Designated Judge, he would be obliged to consider whether the applicability of MCOC Act is a ground enough to cancel the bail and in any event whether the registration of subsequent CR. can be considered a supervening circumstances to enable him to exercise his power under Section 439 (2) of Cr.P.C. From a perusal of the order of the learned Judge, it appears that he has been influenced by the fact that mere applicability of MCOC Act at a subsequent stage is no ground for cancellation of the bail granted earlier. However, he is also influenced by the fact that the

prosecution could not satisfy him as to why custodial interrogation is necessary.

9. In my view, the observations of the learned Judge, in para 7 and 8 of the impugned order, prima facie are unsustainable in the light of the judgment of Single Judge of this Court. It is not open for the learned Judge to take the view as is taken by him. After application of provision of MCOC Act an order of bail is capable of being cancelled is the view and that view is not brought to the notice of the Designated Judge. However, I do not propose to go into further details as that would prejudice the case of both sides.

10. In my view, two circumstances, one, the view of the learned single Judge of this Court having not placed before the Special Judge, Secondly CR. No.215/2005 being registered subsequent to the impugned order are reason enough to set aside the impugned order. The application for cancellation of bail preferred by the prosecution before the learned Judge is restored to its file for being dealt with and decided afresh in accordance with law. Needless to state that the learned Judge will give opportunity to both sides to make

appropriate submissions. He shall consider the fact of applicability of MCOC Act, as well as registration of CR.No. 215/2005 and pass appropriate orders treating the application by State as one under Section 439(2) Cr.P.C. r/w relevant provisions of MCOC Act. All the contentions of both sides in this behalf are kept open. Both sides agree that the application upon restoration shall be dealt with by the learned Designated Judge under MCOC Act and no plea as far as jurisdiction is concerned would be raised.

11. At this stage, Mr. Mundargi submits that the respondents-accused be protected, in case the learned Judge decides to cancel the bail in their favour. His request is that the order of the Special Judge, may not be given effect to for a reasonable period to enable them to approach this Court. This request is opposed by Mrs. Deshmukh on the ground that the accused cannot presume that their bail would be cancelled. In any case, it is not necessary to pass a preventive order like this but in case the learned Judge decides to cancel the bail granted in favour of the respondents/accused, he shall consider the plea, not to give effect to his order for a reasonable period to

enable the accused to challenge the same in higher Court, in accordance with law and pass appropriate orders in that behalf.

(S.C. DHARMADHIKARI, J.)